IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.289 OF 1991

Harakchand Punjabhai Shah : Petitioner

V/s.

Recovery Officer,

Collector of Bombay & Ors. : Respondents

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Mr.S.S.Redekar for the petitioner.

Mr.A.H.Palekar, Asstt. Govt. Pleader, for the respondent nos.1 to 3.

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**CORAM : S.A. BOBDE, J.**

August 31, 2005.

P.C.

1. The petitioner has challenged two notices, one dated 10.10.1990 issued by the Collector of Bombay for recovery of tax on motor vehicles in the sum of Rs.13,580/- under section 267 of the Maharashtra Land Revenue Code. The other notice challenged by the petitioner is dated 29.5.1990 attaching certain movable properties mentioned therein for non-payment of motor vehicles tax.

2. The amounts sought to be recovered from the petitioner is a sum of Rs.13,580/- in respect of motor vehicle no.MRT-4418 for the period from October 1984 to May 1988. It was contended by the learned counsel for the petitioner that no recovery can be made against the petitioner since the vehicle, which is a truck, did not belong to him. It is said to have been purchased by his brother Mansukhlal P.Shah from one Shyamsunder Madhav Malpani on 23.2.1984. Thereafter, on 29.8.1985 Mansukhlal P. Shah is said to have sold the vehicle to one Mohammed Arif Gulam Mohammed Momin for a consideration of Rs.11,501/-. Thus, according to the petitioner, no recovery of tax in respect of this vehicle could have been made from him.

3. In the affidavit-in-reply sworn by Mrs.Asmita P. Dighavkar, Assistant Regional Transport Officer, Mumbai, it is stated that the seller of the truck has stated in his letter dated 2.5.1988 that he has sold the vehicle in question on 23.4.1984 to the petitioner i.e. Harakchand Shah. The said Malpani has also submitted a receipt dated 23.4.1984 for Rs.10,000/- and delivery note of the same date showing that the petitioner has taken delivery of the vehicle. He has also annexed a letter dated 23.4.1984 addressed to the R.T.O. intimating the sale of the vehicle to the petitioner and a No Objection for transfer

of the vehicle in the petitioner's name. In these circumstances, it is clear that there is a dispute on facts which cannot be resolved by this Court in exercise of its extraordinary jurisdiction.

4. This petition is, therefore, dismissed. The rule stands discharged.

S.A. BOBDE, J.